

LiveNote | World ServiceSM

A new perspective on court reporting.

In United States District Court For the District of Hawaii

Deposition of

Wayne Berry
Volume 2

May 19, 2005

Wayne Berry

v.

Hawaiian Express Service, Inc.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY, a Hawaii CIVIL NO. CV03-00385 SOM LEK
citizen, (Copyright)

5 Plaintiff,

6 vs.

7 HAWAIIAN EXPRESS SERVICE,
8 INC., a California corporation, VOLUME II
et al.,

9 Defendants.

10

11 VIDEOTAPED

12 DEPOSITION OF WAYNE BERRY

13

14 Taken on behalf of Defendants,
15 at the Law Offices of Kobayashi, Sugita & Goda,
16 Suite 2600, 999 Bishop Street, Honolulu, Hawaii,
17 commencing at 1:11 p.m.,
18 on Thursday, May 19, 2005, pursuant to Notice.

19

20 BEFORE: HEDY COLEMAN, CSR #116, RPR, CRR, CM
21 Notary Public, State of Hawaii
22 Certified Shorthand Reporter

23

24

25 Ali'i Court Reporting
2355 Ala Wai Boulevard, Suite 306
Honolulu, Hawaii 96815
(808) 926-1719

1 APPEARANCES:

2 For the Plaintiff:

3 TIMOTHY J. HOGAN, ESQ.
4 Lynch, Ichida, Thompson & Kim
1132 Bishop Street, Suite 1405
Honolulu, Hawaii 96813

5

6 For the Defendant Post-Confirmation Trust:

7 LEX R. SMITH, ESQ.
8 ANNE E. LOPEZ, ESQ.
Kobayashi, Sugita & Goda
9 First Hawaiian Center, Suite 2600
999 Bishop Street
Honolulu, Hawaii 96813

10

11 and

12

13 ERIC C. LIEBELER, ESQ.
DAMIAN D. CAPOZZOLA, ESQ.
Kirkland & Ellis
14 777 South Figueroa Street
Los Angeles, California 90017

15

16 For the Defendants Mark Dillon, Teresa Noa and Brian
17 Christensen, et al:

18 LYLE HOSODA, ESQ.
19 RAINA P.B. MEAD, ESQ.
Lyle Hosoda & Associates
345 Queen Street, Suite 804
20 Honolulu, Hawaii 96813

21

22 For the Defendants Hawaiian Express Service, Inc.,
H.E.S. Transportation Services, Inc., et al.:

23 ROY J. TJIOE, ESQ.
24 Goodsill Anderson Quinn & Stifel
Alii Place, Suite 1800
1099 Alakea Street
25 Honolulu, Hawaii 96813

1 For the Defendant Guidance Software, Inc. and Michael

2 Gurzi:

3 REX Y. FUJICHAKU, ESQ.
4 Bronster Crabtree & Hoshibata
5 Suite 2300, Pauahi Tower
6 1001 Bishop Street
7 Honolulu, Hawaii 96813

8 For Defendant Alix Partners, LLC:

9 GREGORY Y.P. TOM, ESQ.
10 Watanabe Ing Kawashima & Komeiji
11 999 Bishop Street
12 23rd Floor
13 Honolulu, Hawaii 96813

14 Also present: Wayne Berry
15 Martin Walker, Ph.D.

16 Videographer: Robert Whitman
17
18
19
20
21
22
23
24
25

1 I N D E X

2 EXAMINATION BY: PAGE

3 Mr. Fujichaku 267

4 Mr. Liebeler 284

5 Mr. Hosoda 292

6 Mr. Smith 327

7

8 EXHIBITS MARKED FOR IDENTIFICATION

9

10 Exhibit 77 Handwritten notes with 272

11 C5"0"1R5EON! at the top.

12 Exhibit 79 Email between Damian Copozzola 377

13 and himothy J. Hogan with attachments.

14 Exhibit 80 Email and attachments, PCT-B BD 380

15 00071 to -00073.

16 Exhibit 78 Wayne Berry's Response to 382

17 Fleming's First Request For Admissions

18 Propounded to Wayne Berry re: Claim No.

19 18704.

20 Exhibit 81 Emails between Damian Capozzola 399

21 and Timothy Hogan with attachments.

22

23

24

25

1 products.

2 Q Did you discuss anything else with the Department
3 of Agriculture, other than the concern about diversions?

4 A No.

5 Q How long ago did you have that communication?

6 A Whenever we had that mad cow was in the news.

7 Q Now, yesterday you mentioned that you have a
8 concern in connection with milk cartons that have Fleming's
9 name on them, and that you had done some investigation
10 relating to that. Do you remember?

11 A Yes.

12 Q Have you contacted the Department of Agriculture
13 or any other entity in connection with the milk labeling
14 that you brought up yesterday?

15 A The Department of Health in Honolulu.

16 Q Okay. So there is a state agency that you have
17 communicated with regarding Fleming, or I guess this would
18 be C&S?

19 A I don't -- I think Fleming -- yeah, you're
20 probably right. The only time Fleming's name was mentioned
21 was the name on the carton. It was more regarding the --
22 the bad milk, and the fact that the shelf life is no good
23 and it all comes over here in one large container. And
24 we're probably the only state where we have double
25 pasteurized milk.